IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 20949 of 2005(R)

PETITIONER:

T.K.MOHAMMED HARIS, 'AREEQ', PUTTOT PLYODE KADIRUR, KANNUR DISTRICT.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS:

1. THE TAHSILDAR, THALASSERY.

2. THE TAHSILDAR, REVENUE RECOVERY, THALASSERY.

3. THE SECRETARY, KADIRUR GRAMA PANCHAYATH REP. BY THE SECRETARY, KADIRUR, THALASSERY.

BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 20949/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ASSESSMENT ORDER DT.20.10.03 OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE CERTIFICATE ISSUED BY THE 3RD RESPONDENT DT.10.11.03.

EXT.P3:- COPY OF THE RECEIPT DT.19.12.97 ISSUED BY EXECUTIVE OFFICER OF 3RD RESPONDENT.

EXT.P4:- COPY OF THE DEMAND NOTICE DT.9.6.05.

ANNEXURE A:- COPY OF THE RETURN IS PRODUCED HEREWITH.

ANNEXURE B:- COPY OF THE REPORT FILED BY THE VILLAGE OFFICER.

ANNEXURE C:- COPY OF THE PLAN OF THE BUILDING SUBMITTED BY THE VILLAGE OFFICER.

/TRUE COPY/

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K.BALAKRISHNAN NAIR,J.

WP(C)NO.20949 OF 2005-R

Judgment

The petitioner has constructed a building in RS No.1/1 of Kadirur amsom Pulyode desom of Thalassery taluk. The said building has been assessed to luxury tax as per Ext.P1 order of the Tahsildar dated 20.10.2003. The petitioner submits, relying on Ext.P2 certificate issued by the Kadirur grama panchayat to the effect that the construction of the building was completed during the financial year 1997-98, he paid the property tax for that year as per Ext.P3. Based on Ext.P1, he was served with Ext.P4 revenue recovery notice for recovering the luxury tax due. So, this Writ Petition is filed, challenging Exts.P1 and P4.

2. The 1st respondent has filed a counter affidavit, in which it is submitted that as per the report of the Village Officer and the return filed on behalf of the petitioner, the construction of the building was completed only in June 1999 and it was occupied in July 1999. Going by the plinth area of the building, it is common case that luxury tax is payable by the petitioner provided the building is constructed after 01.04.1999. So, the dispute relates to the date of completion of construction of the building. The form of return which is produced as Annexure A along with the report filed by the Tahsildar, is filed by the petitioner's wife. The same was filed pursuant to a notice issued by the Village Officer. The petitioner has not filed any reply affidavit to the counter affidavit of the 1st respondent or to the report filed by the Tahsildar. Therefore, there is no reason to disbelieve the contents of the Form II return filed by the petitioner's wife. But, the learned

counsel for the petitioner submitted that the petitioner's wife does not know English and the return has been filled up in English. The signature appears to be the same as that of his wife, it is admitted. This factual dispute cannot be resolved in this Writ Petition. Accordingly, it is dismissed. But, this will not affect the rights, if any of the petitioner to invoke the appellate remedy. If the appeal is filed, the period this Writ Petition was pending before this Court shall be excluded while computing the period of limitation in invoking the appellate remedy.

The Writ Petition is disposed of as above.

06.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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